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9 Attorneys for Plaintiffs

10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14) CASE NO. SACV12 – 1448 AG
15 WILLIAM WILBER et al.,) (JPRX)
16)
17 Plaintiffs,)
18 v.) **STIPULATION TO VACATE**
19 TOP GLOBAL CAPITAL, INC. et al.) **THE AMENDED JUDGMENT**
20)
21 Defendants.) **Judge: Hon. Andrew J. Guilford**
22)
23)
24)

25 IT IS HEREBY STIPULATED by and between Plaintiffs WILLIAM
26 WILBER, NICOLE KHARZI, KAREN OLDMIXON, LARRY CAIN, ROBYN
27 JAMISON, OTTO FOX, GAIL YOUNG, MARK THOMAS, CINDY
28

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STIPULATION TO VACATE THE AMENDED JUDGMENT

1 DICOSIMO, CAROL WINKLER AND DAVID WINKLER ("Plaintiffs") and
2 Defendant METAQUOTES SOFTWARE CORP. ("MetaQuotes"), by and through
3 their counsel, that:
4

5 1. On October 9, 2013, an entry of default against Defendant
6 MetaQuotes was entered by the clerk of the court. ("Entry of Default," Dkt. No.
7 98.)
8

9
10 2. Pursuant to the entry of default, on December 4, 2013, a default
11 judgment was entered against all defendants, including MetaQuotes. However, the
12 default judgment contained an incorrect docket number of 13-01448, rather than
13 12-01448. ("Original Default Judgment," Dkt. No. 105.)
14
15

16 3. Plaintiffs discovered the incorrect docket number in the Original
17 Default Judgment. In order to correct this clerical error, Plaintiffs intended to file
18 an Ex Parte Application. On or around February 24, 2014, Plaintiffs contacted
19 opposing counsels, Martin F. Triano ("Triano") and Mark D. Byrne ("Byrne")
20 through email, and sought their consent in order to file the Ex Parte Application.
21
22 Byrne responded with his consent to correct the error in the Case Number, printed
23 at the top of the page on Document 105 by the Clerk of the Court. A true and
24 correct copy of this email exchange is attached as **Exhibit A**.
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27
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1 4. Plaintiffs filed an Ex Parte Application to correct the docket
2 number referenced in the Original Default Judgment. Plaintiffs' application
3 specifically described that Document 105 bears on its first page the docket number
4 13-01448, while the correct docket number for the instant matter is 12-01448. ("Ex
5 Parte Application," Dkt. No. 113.)
6

7
8 5. Following, the Court filed an amended default judgment that corrected
9 the referenced docket number. ("Amended Default Judgment," Dkt. No. 114.)
10

11 6. The Parties do not dispute that the sole purpose for the Amended
12 Default Judgment was to correct the docket number.
13

14 7. The Parties do not dispute that the Original Default Judgment and the
15 Amended Default Judgment are identical in substance, with a minor difference
16 being only the referenced docket number.
17

18 8. On or around March 12, 2014, MetaQuotes then filed a Motion to Set
19 Aside Default and Default Judgment. ("MetaQuotes' Motion," Dkt. No. 118.)
20
21 However, Metaquotes' Notice of Motion referred only to setting aside the Original
22 Default Judgment, inadvertently omitting references to the Amended Default
23 Judgment. However, both the Original Default Judgment and the Amended
24 Default Judgment were described in MetaQuotes' Memorandum of Points and
25 Authorities. ("Memorandum of Points and Authorities," Dkt. No. 118, page 27.)
26
27
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STIPULATION TO VACATE THE AMENDED JUDGMENT

1 Both the Original Default Judgment and the Amended Default Judgment were also
2 described in MetaQuotes' Memorandum of Points and Authorities in support of the
3 Reply. ("Reply Memorandum Points and Authorities, Dkt. No. 127, p. 22.)
4

5 9. On June 5, 2014, the Court granted MetaQuotes' Motion with the
6 condition that MetaQuotes posts a \$50,000 Bond. ("June 5, 2014 Order," Dkt. No.
7 130.)
8

9
10 10. The \$50,000 Bond was posted, and entered into the Court's docket, on
11 June 18, 2014. (Dkt. No. 132.) The Triano Certification was also filed on June 18,
12 2014. (Dkt. No. 133.)
13

14 11. Plaintiffs stipulated that they had no objection to the Bond or the
15 Triano Certification or any other objections as to the sufficiency of the showing as
16 to the fulfillment of conditions for posting a bond. ("Stipulation," Dkt. No. 136.)
17
18

19 12. The Parties agreed that the condition in the June 5, 2014 Order had
20 been satisfied by MetaQuotes.
21

22 13. As a result, the Court issued an Order on July 9, 2014 setting aside the
23 entry of default and vacating the default judgment as to MetaQuotes. ("Order
24 Vacating Judgment," Dkt. No. 137.)
25
26

27 14. The Parties were under the belief that the Order Vacating Judgment
28 applied to the Original Default Judgment and the Amended Default Judgment.

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STIPULATION TO VACATE THE AMENDED JUDGMENT

1 15. Based on this belief, the Parties have proceeded as if there were no
2 outstanding defaults and default judgments against MetaQuotes. For example, on
3 or around August 30, 2014, Plaintiffs filed an Amended Complaint against
4 MetaQuotes. ("Amended Complaint," Dkt. No. 138.)
5

6 16. On or around September 15, 2014, MetaQuotes responded by filing a
7 Motion to Dismiss the Amended Complaint. ("Motion to Dismiss," Dkt. No. 139.)
8
9

10 17. On or around November 4, 2015, the Court issued an order granting
11 the Motion to Dismiss as to all but one claim. ("Minutes (In Chamber) Order,"
12 Dkt. No. 148.)
13

14 18. With one outstanding claim against MetaQuotes, the Parties
15 proceeded to enter into a scheduling order and are presently undergoing discovery.
16
17

18 19. On June 5, 2015, the Court issued a Writ of Execution naming all
19 defaulting defendants, which included MetaQuotes as one of the Judgment
20 Debtors. (Dkt. No. 164.)
21

22 20. Based on the Parties' mutual belief that the default judgment against
23 MetaQuotes had already been vacated, the Parties conferred and sought remedies
24 to remove MetaQuotes from the Writ of Execution.
25
26

27 21. On June 9, 2015, the clerk of the court emailed both Parties and noted
28 that the Amended Default Judgment had not been formally vacated. In order to

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1 properly vacate the Amended Default Judgment, the Court advised MetaQuotes to
2 file a Stipulation and Proposed Order. A copy of the clerk's email is attached as
3 **Exhibit B.**
4

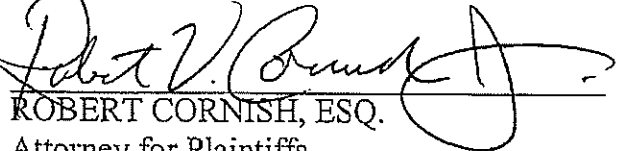
5 22. Pursuant to the Court's request, MetaQuotes files this Stipulation
6
7 along with a Proposed Amended Order Setting Aside the Default Judgment.

8 23. The Parties do not dispute that they believed the July 9, 2014 Order of
9
10 the Court intended to vacate both the Original Default Judgment and the Amended
11 Default Judgment as to MetaQuotes.

12
13 24. The Parties do not dispute that after the issuance of the July 9, 2014
14
15 Order setting aside the default and vacating the judgment, both Parties continued to
16
17 proceed under the belief that no outstanding defaults and default judgments existed
18 against MetaQuotes.

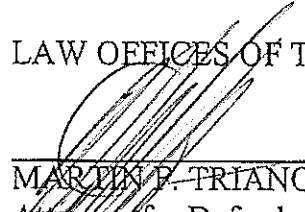
19 Date: June 11, 2015

PHILLIPS LYTTLE LLP

20
21 
22 ROBERT CORNISH, ESQ.
23 Attorney for Plaintiffs

24 Date: June 11, 2015

LAW OFFICES OF TRIANO & BYRNE

25
26 
27 MARTIN P. TRIANO, ESQ.
28 Attorney for Defendant
METAQUOTES SOFTWARE CORP.